

JOHN L. KEMMERER, JR.

IBLA 70-544

Decided April 19, 1972

Appeal from letter decision by the Cheyenne, Wyoming, land office, which refused approval of the assignment of a portion of the oil and gas lease numbered W 095662.

Affirmed.

Oil and Gas Leases: Assignments on Transfers--Oil and Gas Leases:
Extensions

For leases to become segregated through assignment, and thus entitled to the extension authorized for segregated leases, an assignment must be filed when there is at least one lease month remaining in the term of the lease. A partial assignment filed during the last month of the lease term cannot become effective to segregate the lease and to entitle the segregated portions to any extension.

APPEARANCES: John L. Kemmerer, Jr., pro se.

OPINION BY MRS. LEWIS

This is an appeal to the Director, Bureau of Land Management 1/ from a letter-decision of the Cheyenne land office, Bureau of Land Management, dated April 17, 1970, rejecting the assignment of a portion of the oil and gas lease numbered W 095662 from John L. Kemmerer, Jr., to John J. Wanner.

A noncompetitive oil and gas lease was issued May 1, 1960, for a period of five years and was subsequently extended for

1/ The Secretary of the Interior, in the exercise of his supervisory authority, transferred jurisdiction over all appeals pending before the Director, Bureau of Land Management, to the Board of Land Appeals, effective July 1, 1970. Cir. 2273, 35 F.R. 10009, 10012.

another five years ending April 30, 1970, under the provisions of section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. 226 (1970). On April 1, 1970, the assignment was filed with the Cheyenne land office. The assignment was rejected because it was not filed when at least one full lease month remained in the term of the lease. Under this rule, the assignment must have been filed on or before March 31, 1970.

On appeal, the appellant contends that the later filing resulted from no fault of the assignee or assignor; that it was physically impossible to communicate between Denver, New York City, and Cheyenne in the normally routinely efficient manner using the mails. According to appellant, it was during this period that mails into and out of New York City were embargoed due to the mail employees' strike, and this was compounded in the latter part of March by the sick leave work stoppage of the air traffic controllers. He further states that the assignee started the assignment from Denver on March 20, 1970; that the assignor affixed his signature on March 26, 1970, and airtailed the assignment to the Bureau of Land Management in Cheyenne 2/, and that the assignment was delivered April 1, 1970. Appellant believes that he was prevented from timely filing by events beyond his control.

The record shows that the assignment was received by the Cheyenne land office on April 1, 1970, also the date of receipt of a covering letter from John J. Wanner, the assignee, which was dated March 30, 1970, and which stated that the original and two copies of the assignment were enclosed.

The Department has held that assignment of a portion of an oil and gas lease, to be effective, must be filed while there is at least one full "lease month" remaining in the term of the lease. Franco Western Oil Company et al., 65 I.D. 316 (1958). 3/ As this requirement was not met, the land office correctly rejected the assignment.

2/ While Member Lewis might consider an exception to the rule where timely filing is prevented by uncontrollable events affecting the mails, in the present case the evidence is insufficient to establish that appellant allowed sufficient time for processing through the mails.

3/ Safarik v. Udall, 304 F.2d 944 (D.C. Cir. 1962), cert. denied, 371 U.S. 901 (1962); Robert N. and Mona Enfield et al., 4 IBLa 317 (1972).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

Anne Poindexter Lewis, Member

We concur:

Frederick Fishman, Member

Martin Ritvo, Member

